



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2011 REGULAR SESSION

HOUSE BILL NO. 385

AS ENACTED

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ELAINE N. WALKER
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Alter

1 AN ACT relating to the Energy and Environment Cabinet.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 350.060 is amended to read as follows:

4 (1) (a) No person shall engage in surface coal mining and reclamation operations
5 without having first obtained from the cabinet a permit designating the area of
6 land affected by the operation. Permits shall authorize the permittee to engage
7 in surface coal mining and reclamation operations upon the area of land
8 described in his application for a period not to exceed five (5) years. However,
9 if an applicant demonstrates that a specified longer term is reasonably needed
10 to obtain necessary financing for equipment and the opening of the operation
11 and if the application is full and complete for the specified longer term, the
12 cabinet may grant a permit for the longer term. No mining shall be permitted
13 beyond the time period obligations of the initial or extended bond coverage.

14 (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall
15 knowingly and willfully receive, transport, sell, convey, transfer, trade,
16 exchange, donate, purchase, deliver, or in any way derive benefit from coal
17 removed from any surface mining operation which does not have a permit as
18 required under this section.

19 (2) No permit or revision application shall be approved unless the application
20 affirmatively demonstrates, and the cabinet finds in writing on the basis of the
21 information set forth in the application or from information otherwise available, that
22 the permit application is accurate and complete and that all the requirements of this
23 chapter have been complied with.

24 (3) A person desiring a permit to engage in surface coal mining operations shall file an
25 application which shall state:

26 (a) The location and area of land to be affected by the operation, with a
27 description of access to the area from the nearest public highways;

- 1 (b) The owner or owners of the surface of the area of land to be affected by the
2 permit and the owner or owners of all surface area adjacent to any part of the
3 affected area;
- 4 (c) The owner or owners of the coal to be mined;
- 5 (d) The source of the applicant's legal right to mine the coal on the land affected
6 by the permit;
- 7 (e) The permanent and temporary post office addresses of the applicant, which
8 shall be updated immediately if changed at any point prior to final bond
9 release;
- 10 (f) Whether the applicant or any person, partnership, or corporation associated
11 with the applicant holds or has held any other permits under this chapter, and
12 an identification of the permits;
- 13 (g) The names and addresses of every officer, partner, director, or person
14 performing a function similar to a director of the applicant, together with the
15 names and addresses of any individual owning of record ten percent (10%) or
16 more of any class of voting stock of the applicant, and whether the applicant
17 or any person is subject to any of the provisions of subsection (3) of KRS
18 350.130 and he shall so certify. The permittee shall submit updates of this
19 information as changes occur or as otherwise provided by administrative
20 regulation; however, failure to submit updated information shall constitute a
21 violation of this chapter only upon the permittee's refusal or failure to timely
22 submit the information to the cabinet upon request. Upon receipt of updated
23 information satisfactory to the cabinet, the cabinet shall promptly update its
24 computer system containing the information;
- 25 (h) A listing of any violations of this chapter, Public Law 95-87, and any law,
26 rule, or regulation in effect for the protection of air or water resources incurred
27 by the applicant in connection with any surface coal mining and reclamation

1 operation during the three (3) year period prior to the date of an application.

2 The list shall indicate the final resolution of the violations; and

3 (i) Whether the area of land to be affected by the operation has been previously
4 mined and is in compliance with current reclamation standards, and, if not,
5 identify the needed reclamation work.

6 (4) The application for a permit shall be accompanied by an official document, and an
7 affidavit attesting to the document's authenticity, which will evidence what
8 particular business entity the applicant is, whether a foreign or domestic
9 corporation, a partnership, an entity doing business as another, or, if sole
10 proprietorship, an affidavit so stating.

11 (5) The application for a permit shall be accompanied by copies, in numbers
12 satisfactory to the cabinet, of a United States Geological Survey topographic map or
13 other map acceptable to the cabinet on which the applicant has indicated the
14 location of the operation, the course which would be taken by drainage from the
15 operation to the stream or streams to which the drainage would normally flow, the
16 name of the applicant and date, and the name of the person who located the
17 operation on the map.

18 (6) The application for a permit shall be accompanied by copies, in numbers
19 satisfactory to the cabinet, of an enlarged United States Geological Survey
20 topographic map or other map acceptable to the cabinet meeting the requirements of
21 paragraphs (a) to (i) of this subsection. The map shall:

22 (a) Be prepared and certified by a professional engineer registered under the
23 provisions of KRS Chapter 322. The certification shall be in the form as
24 provided in subsection (8) of this section, except that the engineer shall not be
25 required to certify the true ownership of property under paragraph (d) of this
26 subsection;

27 (b) Identify the area to correspond with the application;

- 1 (c) Show adjacent deep mining;
- 2 (d) Show the boundaries of surface properties and names of owners of the
3 affected area and adjacent to any part of the affected area;
- 4 (e) Be of a scale of 1:24,000 or larger;
- 5 (f) Show the names and locations of all streams, creeks, or other bodies of public
6 water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the
7 area of land affected within three hundred (300) feet of an as-drilled oil or gas
8 well, but as-drilled locations of oil and gas wells shall be certified only by a
9 licensed surveyor and the well locations shall be entered in coordinates in feet
10 units, using NAD 83, with Single Zone Projection, as those terms are defined
11 in KRS 350.010;
- 12 (g) Show by appropriate markings the boundaries of the area of land affected, the
13 cropline of the seam or deposit of coal to be mined, and the total number of
14 acres involved in the area of land affected;
- 15 (h) Show the date on which the map was prepared, the north point, and the
16 quadrangle name; and
- 17 (i) Show the drainage plan on and away from the area of land affected. The plan
18 shall indicate the directional flow of water, constructed drainways, natural
19 waterways used for drainage, and the streams or tributaries receiving the
20 discharge.
- 21 (7) Each application shall include a determination of the probable hydrologic
22 consequences of the mining and reclamation operations, both on and off the mine
23 site, with respect to the hydrologic regime, quantity and quality of water in surface
24 and groundwater systems, including the dissolved and suspended solids under
25 seasonal flow conditions, and the collection of sufficient data for the mine site and
26 surrounding areas so that an assessment can be made by the cabinet of the probable
27 cumulative impacts of all anticipated mining in the area upon the hydrology of the

1 area and particularly upon water availability. This determination shall not be
2 required until the time hydrologic information on the general area prior to mining is
3 made available from an appropriate federal or state agency. The permit shall not be
4 approved until the information is available and is incorporated into the application.

5 (8) All certifications required by this chapter to be made by professional engineers shall
6 be done in the form prescribed by the cabinet and shall be reasonably specific as to
7 the work being certified. The cabinet may reject any document or map as
8 incomplete if it is not properly certified.

9 (9) In addition to the information and maps required above, each application for a
10 permit shall be accompanied by detailed plans or proposals showing the method of
11 operation; the manner, time, and distance for backfilling; grading work; and a
12 reclamation plan for the affected area, which proposals shall meet the requirements
13 of this chapter and administrative regulations adopted pursuant thereto.

14 (10) The application for a permit shall be accompanied by proof that the applicant has
15 public liability insurance coverage satisfactory to the cabinet for the surface mining
16 and reclamation operations for which the permit is sought, or proof that the
17 applicant has satisfied self-insurance requirements as provided by administrative
18 regulations of the cabinet. The coverage shall be maintained in full force and effect
19 during the terms of the permit and any permit renewal, and until reclamation
20 operations are completed.

21 (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to
22 the cost of processing the permit application but not to exceed two thousand five
23 hundred dollars (\$2,500), plus a fee set by administrative regulation but not to
24 exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of
25 land to be affected by the operation, shall be paid before the permit required in this
26 section shall be issued; provided that if the cabinet approves an incremental bonding
27 plan submitted by the applicant, the acreage fees may be paid in increments and at

1 times corresponding to the approved plan. The applicant shall file with the cabinet a
 2 bond payable to the Commonwealth of Kentucky with surety satisfactory to the
 3 cabinet in the sum to be determined by the cabinet for each acre or fraction thereof
 4 of the area of land affected, with a minimum bond of ten thousand dollars
 5 (\$10,000), conditioned upon the faithful performance of the requirements set forth
 6 in this chapter and of the administrative regulations of the cabinet. The cabinet shall
 7 forfeit the entire amount of the bond for the permit area or increment in the event of
 8 forfeiture. In determining the amount of the bond, the cabinet shall take into
 9 consideration the character and nature of the overburden; the future suitable use of
 10 the land involved; the cost of backfilling, grading, and reclamation to be required;
 11 and the probable difficulty of reclamation, giving consideration to such factors as
 12 topography, geology, hydrology, and revegetation potential. The bond amount shall
 13 initially be computed to be sufficient to assure completion of reclamation if the
 14 work had to be performed by the cabinet in the event of forfeiture. Within thirty
 15 (30) days of a cabinet determination of a need to change a bond protocol
 16 currently in use, the cabinet shall immediately~~[The cabinet shall]~~ promulgate
 17 administrative regulations setting forth bonding requirements including, but not
 18 limited to, requirements for the amount, duration, release, and forfeiture of bonds.
 19 Bond protocols shall not be exempt from KRS 13A.100 and shall be established
 20 by promulgating administrative regulations under KRS Chapter 13A. Failure to
 21 include the formula for establishing the amount of the bond in any
 22 administrative regulation on bonding requirements shall be deemed a failure to
 23 comply with the prescriptions of this section and the administrative regulation
 24 shall automatically be declared deficient in accordance with KRS Chapter 13A.
 25 (12) The cabinet shall promulgate administrative regulations for the permitting of
 26 operations with surface effects of underground mining and other surface coal
 27 mining and reclamation operations consistent with this section. The cabinet shall

1 recognize the distinct differences between the surface effects of underground
2 mining and strip mining, as also provided in KRS 350.151, in promulgating
3 permitting requirements for these operations; provided, that the cabinet shall require
4 that all the areas overlying underground workings be permitted but that the areas
5 overlying underground workings not affected by operations and facilities occurring
6 on the surface shall not be subject to the payment of acreage fees or bond
7 requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.

8 (13) Any valid permit issued pursuant to this chapter shall carry with it the right of
9 successive renewal upon expiration with respect to areas within the boundaries of
10 the existing permit. An applicant for renewal of a permit shall pay a basic fee set by
11 regulation, not to exceed seven hundred fifty dollars (\$750). The holders of the
12 permit may apply for renewal and the renewal shall be issued, provided that on
13 application for renewal the burden shall be on the opponents of renewal, subsequent
14 to the fulfillment of the public notice requirements of this chapter, unless it is
15 established and written findings by the cabinet are made that:

- 16 (a) The terms and conditions of the existing permit are not being satisfactorily
17 met;
- 18 (b) The present surface coal mining and reclamation operation is not in
19 compliance with the environmental protection standards of this chapter;
- 20 (c) The renewal requested substantially jeopardizes the applicant's continuing
21 responsibility on existing permit areas;
- 22 (d) The applicant has not provided evidence that the performance bond in effect
23 for the operation will continue in full force and effect for any renewal
24 requested in the application as well as any additional bond the cabinet might
25 require; or
- 26 (e) Any additional revised or updated information required by the cabinet has not
27 been provided.

1 Prior to the approval of any renewal of permit, the cabinet shall provide notice to
2 the appropriate public authorities.

3 (14) If an application for renewal of a valid permit includes a proposal to extend the
4 mining operation beyond the boundaries authorized in the existing permit, the
5 portion of the application for renewal of a valid permit which addresses any new
6 areas of surface disturbance shall be subject to the full standards applicable to new
7 applications under this chapter.

8 (15) Any permit renewal shall be for a term not to exceed the period of the original
9 permit. Application for permit renewal shall be made at least one hundred twenty
10 (120) days prior to the expiration of the valid permit.

11 (16) Notwithstanding any of the provisions of this section, a permit shall terminate if the
12 permittee has not commenced the surface coal mining operations covered by the
13 permit within three (3) years of the issuance of the permit. However, the cabinet
14 may grant reasonable extensions of time upon a showing that the extensions are
15 necessary by reason of litigation precluding commencement of operations, or
16 threatening substantial economic loss to the permittee, or by reason of conditions
17 beyond the control and without the fault or negligence of the permittee. With
18 respect to coal to be mined for use in a synthetic fuel facility or specific major
19 electric generating facility, the permittee shall be deemed to have commenced
20 surface mining operations at the time the construction of the synthetic fuel or
21 generating facility is initiated.

22 (17) Each application for a permit or revision for auger mining on a previously mined
23 area shall contain information to describe the area to be affected, to show that the
24 proposed method of operation will result in stable post-mining conditions, and
25 reduce or eliminate adverse environmental conditions created by previous mining
26 activities. If the cabinet determines that the affected area cannot be stabilized and
27 reclaimed subsequent to augering or that the operation will result in an adverse

1 impact to the proposed or adjacent area, the permit or revision shall not be issued.
 2 The cabinet shall, consistent with all applicable requirements of this chapter, issue a
 3 permit or revision if the applicant demonstrates that the proposed coal mining
 4 operations will provide for reduction or elimination of the highwall, or reduction or
 5 abatement of adverse impacts resulting from past mining activities, or stabilization
 6 or enhancement of a previously mined area. The cabinet shall insure that all
 7 reasonably available spoil material will be used to backfill the highwall to the extent
 8 practical and feasible; provided, however, that in all cases the holes be properly
 9 sealed and backfilled to a minimum of four (4) feet above the coal seam being
 10 mined.

11 (18) All operations involving the loading of coal which do not separate the coal from its
 12 impurities, and which are not located at or near the mine site, shall be exempt from
 13 the requirements of this chapter.


14 ➔SECTION 2. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER
 15 224 IS CREATED TO READ AS FOLLOWS:

16 (1) The cabinet may promulgate administrative regulations pursuant to KRS Chapter
 17 13A establishing:

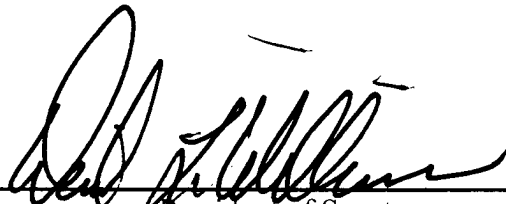
18 (a) Standards for the operation of laboratories relating to analyses and
 19 laboratory tests for wastewater pollution, on behalf of activities subject to 33
 20 U.S.C. sec. 1342, fees for certification and competency evaluations of those
 21 laboratories, and issuance of certificates of competency to persons and
 22 laboratories meeting the standards established by the agency; and

23 (b) A certification program for laboratories that submit environmental data as
 24 it relates to analyses and laboratory tests for activities subject to 33 U.S.C.
 25 sec. 1342. In developing the certification program, the cabinet shall
 26 consider, among other things, nationally recognized certification programs
 27 and those tailored for individual states.

1 (2) After one (1) year from the effective date of the administrative regulations
2 described in subsection (1)(a) and (b) of this section, all environmental samples
3 collected pursuant to an approved permit under 33 U.S.C. sec. 1342 shall be
4 submitted to a laboratory that is certified by the cabinet. After that date, any data
5 submitted, on behalf of activities subject to 33 U.S.C. sec. 1342, to any agencies of
6 the cabinet that are generated by an uncertified laboratory shall be deemed
7 invalid.




Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 3-17-11